

The Transatlantic Trade and Investment Partnership: Interest groups and public opinion

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The Transatlantic Trade and Investment Partnership (TTIP) constitutes an attempt to improve job creation and boost the economies on both sides of the Atlantic. Yet economic benefits and standard setting impacts notwithstanding, policy makers and legislators assess trade and investment agreements by a different metric. Politics, not economics, will determine the fate of TTIP, and opponents appear to have made some inroads with the public. This paper looks at the influence of interest groups and public opinions on developments in TTIP. This initial study finds correlations between public interest group activity, public opinion, and changes in TTIP. Key words: Transatlantic trade, public opinion, web trends, public interest groups.

1. Introduction

In 2013 the European Union (EU) and the United States (US) began negotiating the Transatlantic Trade and Investment Partnership (TTIP). More expansive than normal trade agreements TTIP will include tariffs reductions or eliminations, but technical barriers to trade (TBT), or non-tariff barriers (NTBs), are the main focus of negotiations.¹ Specifically, TTIP is aimed at narrowing or removing divergent standards across the Atlantic. TTIP's encompassing agenda represents a strategic vision of significantly improved transatlantic relations, where 'Mutual recognition of equivalent norms and regulatory coherence across the transatlantic space....not only promise to improve the lives of [Americans and Europeans], but form the core of broader international norms and standards.'² This means solidifying transatlantic ties amidst growing competition (read: threats) from China and other emerging countries by agreeing to common standards in the world's two largest markets. The potentially significant economic gains

from an ambitious TTIP remain contested,³ even if the predicted effects from trade diversion are mostly positive.⁴

Given the scope of the negotiating agenda, the size of the transatlantic relationship (€700bn in annual bilateral trade, 44 percent of global GDP, 32 percent of trade, and 60 percent of foreign investments worldwide in 2012), and the desire to mold and solidify international standards in tune with EU and US preferences TTIP will also have far reaching geopolitical implications.⁵ The US and EU tend to seek trade agreements with the same countries and regions, often driven by realist pursuits of influence over these markets, even if normative preferences for human rights and development also feature prominently.⁶ Though there are significant similarities in policy objectives, recognized processes, and agreed standards, no two treaties signed by the EU and the US are identical.

The size of the players and the length and scope of TTIP negotiations – affecting more sectors and industries than any previous agreement – has evoked attention among civil society groups. This paper constitutes a first attempt at addressing two questions: What role do domestic groups and public opinion play in TTIP? How is this influence or impact discernable? This paper is part of a larger outcome-oriented study to explain the influences on and developments in TTIP, and is intended as a contribution to the literature examining the role of interest groups and public opinion as they contribute to our understanding of developments in and outcomes of complex and multifaceted bi-lateral negotiations. It is argued that public interest groups have a real impact of how TTIP negotiations are perceived by the public (i.e. voters), in turn constraining available options for public officials and negotiators attempting an agreement.

The next section presents a summary of the debate and developments on SPS and GMO issues, and ISDS, in TTIP negotiations. This is followed by a discussion of the theoretical

framework, which draws on theories pertaining to trade policy, interest group activities, and public opinion. The approach used draws on Dür and Mateo (2014), whose study on ACTA is deemed a good template for assessing interest group's impact on TTIP. The next section applies the theoretical framework to help explain the influence achieved by civil society groups, primarily public interest groups, in shaping key issues in TTIP. The conclusion summarizes the findings while bringing further attention to the political, rather than economic, nature of the debates shaping TTIP.

2. Food and ISDS in TTIP: the issues and debate.

Both the US and EU began negotiations seeking greater market access for dairy, poultry, and beef exports, while also desiring to eliminate tariffs. While agricultural and food products constitute a relatively small portion (4-5%) of transatlantic trade, tariff levels are higher on agricultural and food products than other sectors, averaging 9 % (US) and 14% (EU), with applied EU tariffs on dairy imports hovering above 50% and applied American beverage tariffs of 16%.⁷ Eliminating applied tariffs on most products was not expected to face resistance, but discussions on food products, processes, and standards were, in the words of one US negotiator, 'going to be very difficult.' European exports to the US are led by processed foods and are ten times greater than imports of American goods. Yet with the impending abolishment of EU milk and sugar quotas European producers saw TTIP as a way of expanding market access for, including for grade-A dairy, beef, and apples. The US went into negotiations seeking recognition of its SPS standards as equivalent to those in the EU, along with a reduction in technical barriers to trade (regulatory differences, product standards, procedures related to human and animal welfare).⁸ American officials have long reiterated they 'do not want to force European consumers to eat food they reject; rather, we want Europe to follow the advice of its

own food safety authority and to give European consumers a choice, rather than to persistently ignore science-based decision making for political ends.’⁹

As the negotiations were launched European environmental and consumer groups began campaigning against what they perceived as a threat to higher (safer) EU standards, while expressing great resistance to accepting American standards.¹⁰ Controversial issues related to food (sanitary processes, hormones, GMOs) soon joined ISDS at the top of the anti-TTIP campaign. Mutual recognition and recognized equivalence of processes do not require either side to actually alter laws or regulations, but they imply equal quality, and require public acceptance of the other’s standards. Several public interest groups argued that mutual recognition would lead to a race to the bottom as corporate interests were placated, and the convergence of standards across the Atlantic was touted as destroying achievements in the EU on food safety, health and nutrition.¹¹ Groups began criticizing the potential recognition of American standards as ‘weak’ and ‘less safe’, reflected in position papers, social media posts, protests, and public statements, often picked up by the media.¹² The European Consumer Organization explained

It is not without reason that chlorinated chicken has emerged as a symbol of the detriments European consumers might face if a TTIP deal is signed that does not have consumers’ interests at heart. Chlorinated chicken has to do first of all with consumer preferences : research conducted in the UK, Denmark and Finland consistently found that European consumers’ acceptance of meat that has been treated with chemicals is low.¹³

The same document (p. 3) continues with [t]he European approach to meat safety is more efficient in protecting public health,’ and that the American approach is ‘[t]he “easy fix” to make up for poor farming and slaughter hygiene.’

In a June 2014 open letter, which was either published or referenced by several news prominent European outlets, three leading civil society groups argued

...fair, sustainable and safe food could permanently be damaged by the transatlantic trade deal on the table.’ The WTO SPS agreement has been disproportionately used by the US

(on behalf of agribusiness) to challenge EU standards on a wide range of food safety measure. We cannot have confidence that the draft measures designed to expedite agricultural and food trade between Europe and America will uphold to the highest standards the food safety safeguards that protect consumers and animals.¹⁴

Polls kept showing declining support for TTIP, especially on food related issues, with a general public perception of the US as less regulated and more profit driven, resulting in lower safety standards.¹⁵ Commission assurances that no food standards would be lowered was been met with skepticism, ‘we don’tnot having access to the texts creates suspicion, we have to operate under the worst case scenario.’¹⁶ This was continuously repeated in press releases and social media posts.¹⁷

Throughout 2014 and early 2015 the Commission continuously emphasized that TTIP negotiations are the most transparent ever undertaken and that no changes will be made to EU food standards; it even took the unprecedented step of releasing not only position papers but actual proposed texts for the SPS chapter in TTIP.¹⁸ The latter was quickly rebuked by civil society groups as ‘potentially harmful to EU citizens.’¹⁹

The application of the precautionary principle as guiding EU food policy has featured prominently in the debate over TTIP, even if the perception that only the EU uses the precautionary principle is false; it depends on the sector, and overall there appears to be little difference in the number of areas guided by this principle.²⁰ The European Food Safety Agency (EFSA) has deemed numerous currently banned processes and products safe; but all are awaiting political approval. Member States rejected a GM corn (MON810), which, like dozens of other GMOs, was deemed safe by EFSA.²¹ Another GMO, Maize 1507, still awaits Commission approval after 14 years, despite a European Court of Justice decision criticizing the approval process.²² The EU’s chief science adviser urged more evidence-based decisions, even asserting

that GMO opponents suffered from ‘a kind of madness,’ only to be forced out following political outcry over her views.²³ Josling and Tangermann (2014, p. 22) found a major confusion in the EU public, which requires ‘...a distinction needs to be made between the approval of GM products for sale in the EU on the one hand and the question of licensing the planting of GM seed varieties in Europe.’ Parts of the EU market may be accessible after a 2015 EU GM Directive takes effect. This allows member states to decide, on very wide bases, which of the approved GMOs to allow domestically, even if a country banning a particular GMO cannot prohibit imports of products from other EU states allowing the use of the same GMO.²⁴ This could also provide an opportunity for compromise in TTIP by enabling greater American seed imports to specific member countries. The directive was opposed by many civil society groups as insufficiently rigorous in safeguarding against unsafe GMOs.

Investor State Dispute Settlement (ISDS) systems are meant to ensure foreign investors have access to de-politicized legal redress for compensation (not legislative changes) when a host country’s government violates the terms of the treaty. The Europeans have longstanding experience with ISDS through Bilateral Investment Agreements (BITs), which began in Europe after WWII as investors wanted assurances when investing in former colonies; EU states have signed 1,400 BITs, compared with the mere 48 signed by the US.²⁵

ISDS immediately became highly sensitive. In the fall of 2013 civil society groups staged protests and published policy papers opposing ISDS. Even after a pause in negotiations on ISDS was announced in January 2014, opposition continued unabated. Citizen groups held protests and panel discussions, created youtube videos, used facebook to generate support, wrote position papers, and issued press releases against ISDS,²⁶ saying it prevents policy flexibility and thwarts the principle of legitimate decision making by providing companies legal redress against

democratic decisions through suits in international tribunals.²⁷ Throughout the year think tanks, universities, and law centers issued policy papers, legal briefs, and held panel debates.²⁸ The US Congress in turn debated trade promotion authority legislation requiring ISDS in trade agreements.²⁹

Both the US and the EU continuously declared that ISDS does not impede governments' legislative and regulatory independence, while allowing for legitimate investor claims when discriminated against based on nationality, denied due process, or company assets are expropriated without compensation.³⁰ European companies said they would not have ventured deep into Eastern Europe if not for the protection offered by ISDS.³¹ Many academic studies and policy papers recognized that most modern treaties explicitly guarantee states their right to regulate to protect health, the environment, and other areas in the public interest, while disagreeing on the usefulness of existing, and proposed modifications to, models of ISDS.³²

In July 2014 200 EU civil society groups presented more than one million European signatures to the EU Commission, petitioning it to alter its negotiations and hold hearings in Parliament.³³ While rejected (because the petition process does not apply to preparatory decisions, only legal acts) it generated outcry from citizen groups and media coverage across Europe.³⁴ The same group filed a lawsuit against the Commission in November 2014, which will likely serve the same purpose. Opposition to ISDS also worked its way into governments, with France and Germany expressing desires to see a renegotiation of the ISDS clause in the EU-Canadian free trade agreement.³⁵ Following the January 2015, release of the Commission's public 'consultation', the Commission promised months of stakeholder dialogue and possible refinements to ISDS.³⁶ The Commission's position was met with indignation from civil society groups.³⁷

2. Theory

Modern trade agreements concern not only economic gains, but also standard setting and geopolitical considerations, meaning it is very political. Politics is about perceptions, and for agreements requiring legislative ratification constituency perceptions matter. Mansfield & Milner (2010, 2012) argue that although potential veto players may influence the content of an agreement (through concessions), regime type (democracy) is more important for successful FTAs. Mature democracies tend to have numerous formal (legal) and informal (politically sensitive) veto players, diverse electorates, and varying public perceptions of the concept and usefulness of free trade, and yet appear adept at funneling, addressing and incorporating divergent views into successful agreements. Economically hard times also offer democratic leaders an opportunity to balance calls from business to open new markets with protectionist preferences among interest groups and the public, thus committing ‘to a lower level of protectionism than they might otherwise desire, and to signal voters that they will not allow trade policy to be dictated by special interests.’³⁸

Policy makers and trade negotiators on both sides of the Atlantic have also developed mechanisms for consultation with industry before and during negotiations, and major transatlantic business groups have created institutionalized processes for presenting proposals for regulatory reform and influencing trade agendas.³⁹ Other research shows support for a similar ‘economic-elite domination’ theory, where elites shape opinion through think-tanks, media, and other outlets, thus generating a correlation between the preferences of economic elites and the mass public; this research also finds business groups’ preferences slightly negatively correlated with general public preferences.⁴⁰

Dür and Mateo (2014) question the elite driven perspective, and outline a reciprocal relationship between interest groups and public opinion and effects on policy outcome. Since

public opinion is ‘an important determinant of public policy’ they present a theoretical model of how interest groups both shape public opinion and transfer public opinion through to policy makers.⁴¹ The effectiveness of groups’ abilities to shape opinion ‘[i]s likely to depend on a combination of factors including the number, size, demands, and tactics of groups devoted to the same general end.’⁴²

Because the public has existing some preferences and prejudices on most issues, interest groups wishing to shape public opinion toward a certain stance must not only inform (educate) but also appeal to existing public beliefs or opinions, and build on or relate to these. Interest groups cannot counter existing opinion, and ‘[a]re generally constrained to making demands that are, or can be construed as, legitimate or within reason by the standards of the larger publics that will eventually learn of them.’ (Wilson 1995: 288). The expectation thus is for interest group lobbying to be *most effective* if it is consistent with public opinion.⁴³ The empirical question is then whether the public has an opinion on an issue, and whether it is explicit, strong or weak, or perhaps latent, ripe for evocation. If the latter, appealing to domestic cultural, values, and societal norms can serve to solidify opinions and influence trade policy.⁴⁴ Human preference for consistency and simplicity over the complex reality means we often erect filters that stop information which is perceived inconsistent with and contradictory to what one expects based on preconceived notions and worldviews.⁴⁵ This means campaigns to raise salience cannot contradict, and preferably tap into, some exiting beliefs and opinions. Such campaigns may include appealing to product or process associations, which in turn elicit a response. Thus, if chemicals (A) are associated with poison (B), associating a different product or issue (C) with A can elicit a negative response to C.⁴⁶

What if the public is unaware of an issue, and thus lacks preferences? If people lack awareness of an issue it also lacks an opinion, making it easier for policy makers to ignore the public, while requiring interest groups passionate about the issue to educate the public.⁴⁷ If an issue is not atop the public agenda interest groups must first make an issue salient in order to garner support and engage the public. Humans are more receptive to and accepting of fear than positive messaging, and later-in-time information remains more relevant than earlier information.⁴⁸ The literature shows that the less knowledge one has the likelier it is that one changes opinions; logically this makes one more acceptant of both information and propaganda, and less able to distinguish between the two.⁴⁹ Pew Research Center studies of public knowledge of American foreign affairs conducted in 1989 and 2007 are among the few studies what people know, rather than just what they think or believe. The surveys reveal very limited knowledge, and no significant improvement in 2007 compared with 198, despite significantly more access to news via new media.⁵⁰ My own, limited, 2009 college freshmen survey on knowledge of Europe and European policies also showed poor results. Limited knowledge of foreign policy and economics may thus make the public more receptive to the negative messages promulgated by protectionist forces and opponents of change. Once salience is raised and supporters rallied, other groups also tend to mobilize for the cause in a ‘snowball effect’.⁵¹

To further their cause public interest groups use ‘inside’ tactics such as letters to officials and personal meetings, but also ‘outside’ tactics, using their supporters or members to execute traditional lobbying campaigns, such as demonstrations and petitions,⁵² as well as modern versions such as social media postings and creative websites. If government responds when public opinion changes we have ‘dynamic agenda representation.’⁵³

Naturally businesses are also concerned with public opinion. But,

Business associations have firms as members and thus do not need to focus on issues that are highly publicly salient to attract members or supporters. Rather, many members of business associations, namely firms that sell consumer goods and services, may be reluctant to see their names associated with highly unpopular campaigns for fear of losing customers (or even becoming the target of a consumer boycott). High Public salience, then, may have the effect of deterring business lobbying, or at least shifting the burden of lobbying, from firms to business associations.⁵⁴

Examining how the Anti-Counterfeiting Agreement (ACTA) was defeated in the European Parliament, Dür and Mateo (2014) find that active outside lobbying by interest groups raised the salience of the issue in the general public, which in turn mobilized other interest groups, further galvanizing public opinion, which ‘has long been shown to influence public policy.’⁵⁵ Governments ceased ratification in the face of public opposition, and the Parliament voted against the agreement. The defeat of ACTA also challenges the correlation between resources and policy change, supporting other research showing little evidence connects resources spent lobbying with specific policy change.⁵⁶

From policy makers’ perspectives public opinion and interest groups action are not always easy to either delineate or satisfy. Since policy outcome is not always a zero-sum game – more than one group’s preferences can be met if the preferences are positively correlated– one can perceive of policy makers attempting to anticipate people’s basic preferences (what they will accept beyond the immediate; the latent opinion) and values, and so aim for compromises to that end. Whether a chosen policy is acceptable is of course only discernable after its implementation.

From the above overview we find that democracies seek out FTAs, often times to bolster economic growth. The Commission has some autonomy, with an a priori mandate, and strategy, but this does not prevent interest group influence. Public interest groups inform, appeal to and shape public opinion through a variety of means. Successful campaigns raise the salience of issues to the public, often by appealing to perceptions and connecting to culture and values, and

then aligning campaigns with some pre-existing belief, which is then strengthened and/or modified. The working hypotheses are a) that anti-TTIP interest group activity has increased European public opposition to TTIP; and b) that interest group campaigns and public opinion have shaped developments in key sectors of the negotiations. As noted, the purpose here is not a systematic test of hypotheses in order to support a generalizable theory. Rather, this is a first attempt at assessing the influence of European public interest groups by showing correlations between campaigns, public opinion, and developments in TTIP.

4. Interest group activity, public opinion, culture

How can we know if interest groups influenced peoples' preferences on food and investor issues, or views on TTIP? Disaggregating sources of influence, such as media coverage and lobbying efforts, and showing direct causation is very difficult, but we find correlations between campaigns, shifting public opinion, and developments in TTIP.

Public opinion surveys show a mixed message. Europe's long and expansive history of trade agreements, generally favorable European public attitudes towards trade, strong support for scientific bases for decision making, should mean the default assumption would be a public in favor of TTIP; even in the depth of the financial crisis in 2010 65% of European said the EU benefitted from international trade.⁵⁷ While general support for trade remains around 80%, support for TTIP across the EU remains stagnant, and support in some larger EU countries has fallen (Table 1). In April 2014 55% of Germans thought TTIP was 'a good thing', and while 88% of Germans said trade was generally a good thing five months later, only 48% then supported TTIP, which fell to 39% in by November.⁵⁸ Austria exhibited the same decline. No correlation has been found between general support for trade and specific support for TTIP, indicating that anti-TTIP campaigns have had an impact on public opinion.⁵⁹ On related

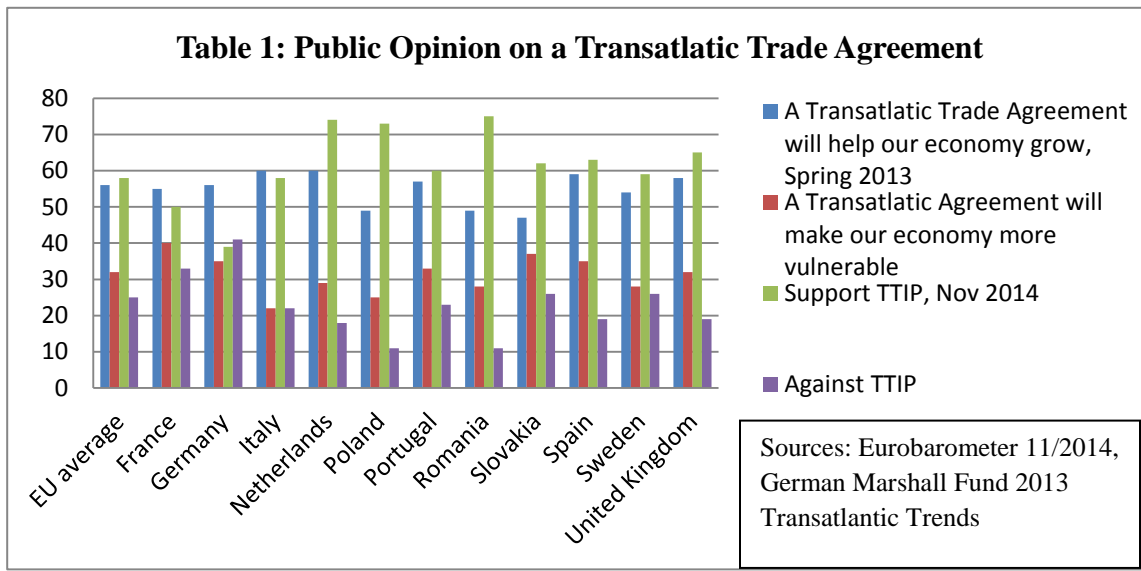
questions in a separate survey, the percentage of British respondents who believed the government could protect the National Health Service in TTIP dropped 24 points from August 2013 to August 2014; 39% thought TTIP would harm small business, and 54% did not trust the government the government to negotiate a deal in the best interest of Britain.⁶⁰ Leaving aside the obvious problem that the EU governments are not negotiating TTIP, the public sentiments are real; assurances that health services will not be privatized are increasingly dismissed, effecting support for TTIP.

In order for people to care about food or investment rules as it pertains to trade, the issues must be made salient. One indication of the increased salience of an issue is the increased frequency it is searched on the internet. Using Goggle Trends and the search term TTIP there were not enough searches to show any volume in 2012 (Graphs 1 & 2). The following year Germany registered the most TTIP web searches, followed by Austria and Belgium, the three countries with the most civil society activity. By 2014 all major EU countries and the US registered significant searches, led by Austria, followed by Germany, Belgium, Finland, UK, Spain and Sweden. Two of the peak periods surround the fifth and seventh rounds of TTIP, and late in 2014, when officials on both sides were talking of the need for a new start and the ISDS consultation report was initially expected. The peaks in searches in Germany and Austria correspond to where the liveliest debates on TTIP have taken place, and where some of the strongest and most active anti-TTIP groups are located. While assessing activity is difficult, there are proxies. The European Citizens Initiative claims 350 groups support its efforts to stop TTIP. While all signatories to the petition may not be active, the list provides one indication of involvement.⁶¹ Excluding the 31 pan-European organizations, the countries with most groups are Germany (114), European UK (25), and Austria and France (each 15).⁶² Bauer (2015) finds that

85 per cent of all TTIP-related positions in German online media are originally authored and spread by anti-TTIP groups. Similarly, for the period July-December 2014, anti-TTIP groups' announcements in Germany amounted to 83 per cent of total online media reporting on average, going up to 93 per cent in peak times. ...around the TTIP negotiations rounds, and it is obvious that there are coordinated multi-online-media campaigns with high success rates.(cf. Table 3)

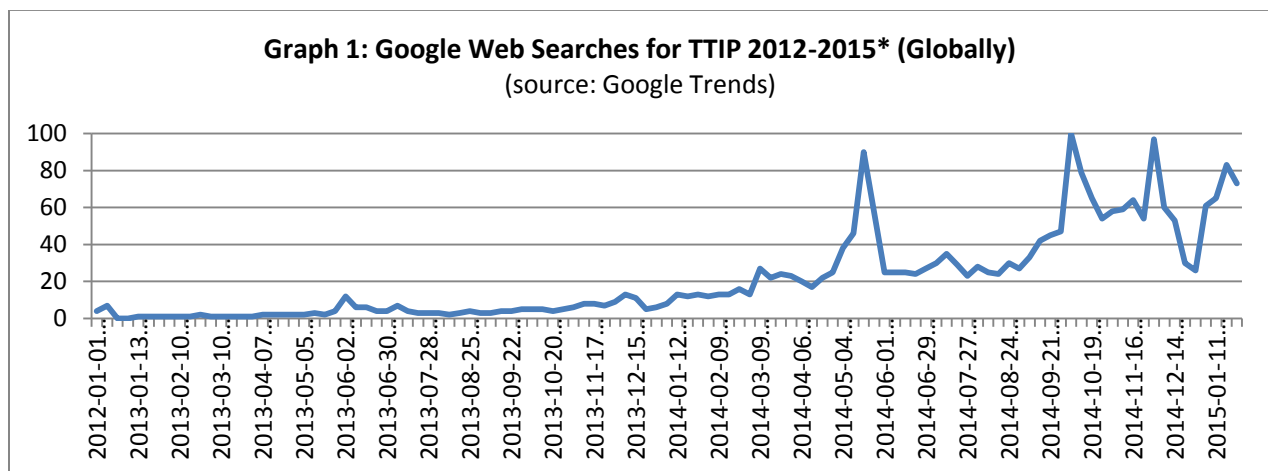
Furthermore, of the 150,000 submissions to the EU's ISDS consultation, 97% were collectively pre-formatted submissions from interest groups; over 96% from the United Kingdom, Austria, Germany, France, Belgium, Netherlands and Spain.⁶³

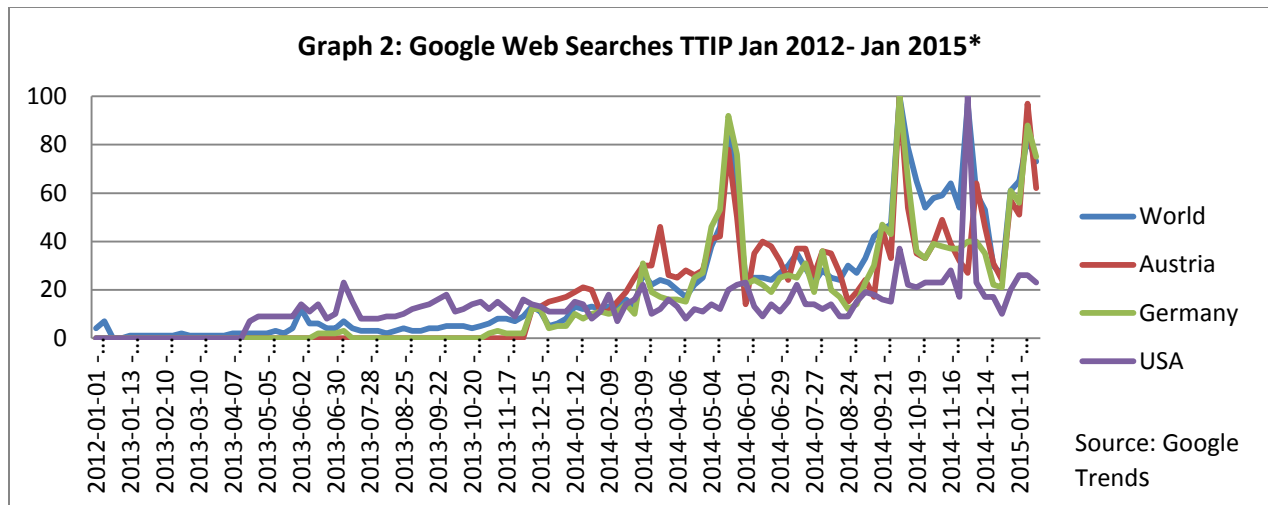
Public interest groups' policy papers and reports on key issues such as agriculture, public services, GMOs, or ISDS, aimed at core members of many civil society groups, have been written by people with immense technical and legal expertise.⁶⁴ One can take issue with case selectivity and references (e.g. the infamous chlorine washes of chickens is routinely emphasized while omitting the permitted, but more diluted, chlorine washes for lettuce in the EU), and the interpretation of legal proposals or analyses are often peppered with potentialities (could, might, possibly etc),⁶⁵ but public commentaries and presentations skillfully present 'regulatory convergence' as preventing future improvements to public safety by cementing current standards, while 'regulatory compatibility' and 'common standards' are interpreted as euphemisms for lowering labor, environmental, and consumer standards.⁶⁶ This may be little different than EU officials and supportive policy makers creating 'fictional expectations' by touting the 'best case scenario' for jobs and economic growth from TTIP based on economic models frequently criticized by academics.⁶⁷ The difference appears to be that the public believe civil society groups; polls suggest their strategy works.



Public interest groups appear to have successfully tapped into Europeans' deeply rooted socio-cultural relationship with food, and thus food safety.⁶⁸ For most Europeans the significance of food extends far beyond its nutritional value; it is an essential part of life; and thus caution prevails and acceptance of others' standards raise concerns.⁶⁹ While science and technology is widely supported as the basis for policy and progress in most areas, less than half of Europeans believe science can improve food (make it safer).⁷⁰ Only 30% of Europeans expressed concerns about residues such as antibiotics or hormones in meat 2010 – before any talk of a trade agreement – but in 2014 there was great resistance to accepting American standards or altering what many Europeans believe are higher EU standards.⁷¹ The prevailing norm of objection to GMOs is deeply entrenched; the last Eurobarometer polls on GMOs, in 2010, showed only 21% thought they were safe.⁷² 60% of European also check the origin of their food, and for nearly half the origin influences their purchase.⁷³ This is higher than for any other category of products, indicating awareness of and concern with food, and likely higher receptivity to public interest campaigns regarding issues related to food.

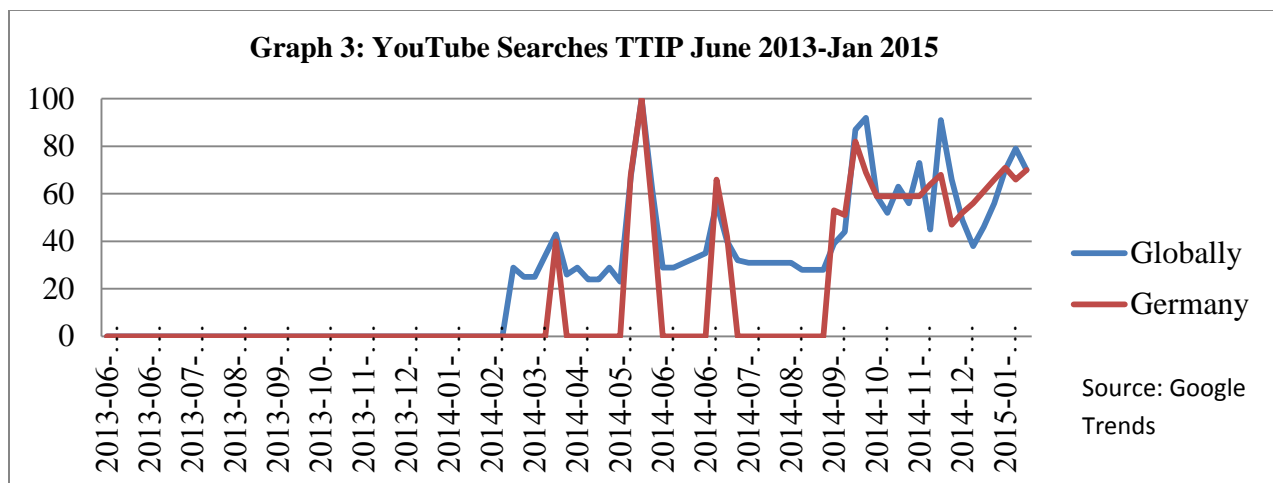
During the preparations for TTIP by the HLWG an EU official acknowledged ‘We know we can’t harmonize certain food standards, we’ll never get that past [national] parliaments, people won’t go for it.’⁷⁴ The official communication over the next two years changed little, with Commission officials continuously reiterating that standards will not change ‘There is no way our citizens accept certain US standards, even if almost the same, politicians know that.’⁷⁵ Thus, even though a deep-seated relationship with food and support for EU food standards preceded TTIP, campaigns evoked and strengthened these sentiments. Appealing to the public about the possibility, however remote, of having to accept GMOs, chlorinated chicken and hormones appears to have been a well-chosen strategy to force officials to repeatedly and publicly guarantee that EU standards would not change. This has may have a substantial impact on the outcome of TTIP since ‘There will be no agreement [TTIP] without poultry [access], Congressional representatives have made that clear. There will be no ag-farm industry support.’⁷⁶





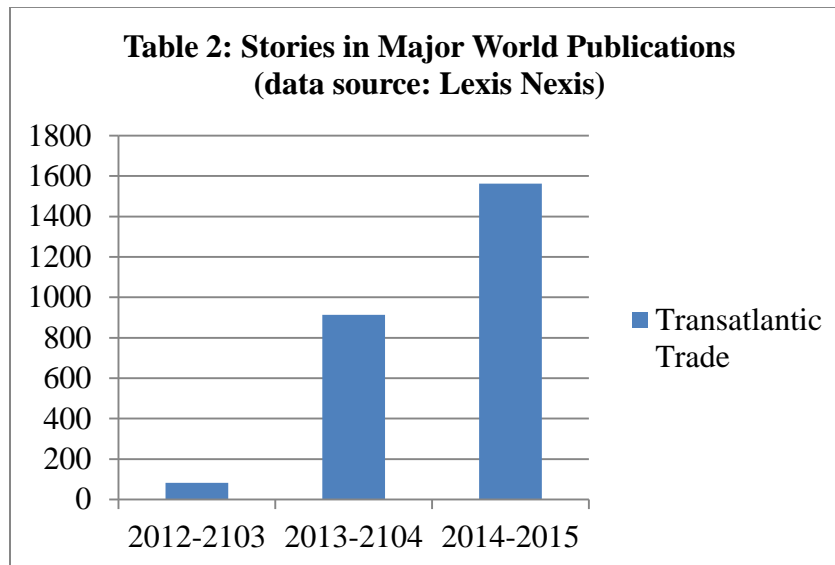
(*All graphs from Google Trends reflect the number of searches for a term relative to the total number of searches done on Google over time. They don't represent absolute search volume numbers, because the data is normalized and presented on a scale from 0-100. Each point on the graph is divided by the highest point and multiplied by 100.)

Youtube on TTIP searches were none existent until 2013, but also peaked around mid-October 2014 (Graph 3). Though volumes on different terms associated with TTIP were too low to register, anecdotally, my own searches in October and December 2014 on TTIP showed 16 and 18 of the 20 first results respectively on youtube were anti-TTIP.

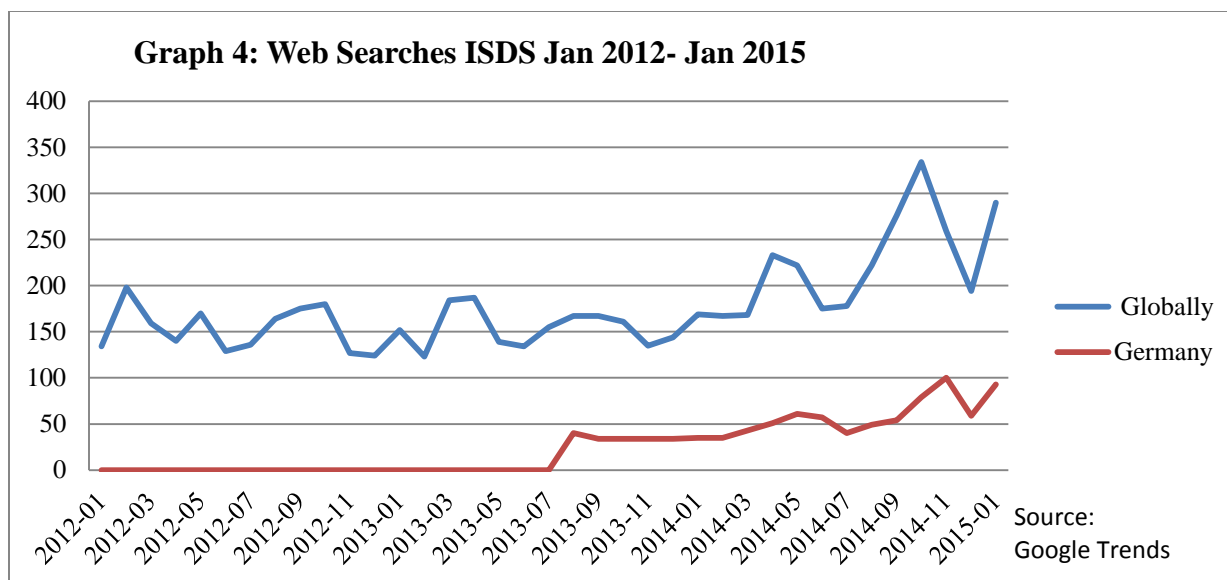


As noted, media coverage itself can act to inform and shape public opinion, but not only did Google Trends peak around the time of increased activities such as 'Anti-TTIP' days and 'European Days of Action' in the spring, summer and fall of 2014 (e.g. May 15, July 8, October

11 and 13, December 19, in Brussels, London, Birmingham, Berlin, and Amsterdam), stories in major global papers also rose as interest group activity increased.⁷⁷



The fervor generated around a half-century old policy, which until 2013 remained an obscure feature of international law to all but industry experts and a fraction of academia, correlates with the commencement of TTIP negotiations and the conclusion of CETA. On the issue of ISDS civil society groups had to educate citizens on a process in place since the late 1950s. With little prior knowledge it was easier to shape opinion by stressing the negative cases and potential with ISDS. The Google Trends for ISDS show a similar pattern to TTIP, corresponding to periods of campaign activism.



Negotiations on ISDS were paused in early 2014 and a consultation announced. The results were expected in late 2014, but were finally released early 2015; spikes in searches are visible during those periods, while public support continuously declined, as noted above. As well as ensuring transparency on this particular issue in negotiations, the Commission sought to balance doing what is necessary to keep ISDS in the TTIP with what is presumed to reasonably satisfy people's basic preferences. The promise of 'continued dialogue' with stakeholders and civil society groups was, as one Commission official admitted, an acknowledgement that civil society groups' 'push' and 'opposition' and public sentiments have affected how they reviewed ISDS and how they decided to go forward with ISDS, including 'the way we communicate this [ISDS]'.⁷⁸ However, while promising more consultation, it has not proposed or been required to remove ISDS from the agenda. Its communication in the press release was strategically worded to balance recognition of opposition with a determination to find a compromise ensuring ISDS is included in a final agreement.⁷⁹

Proponents of TTIP, such as industry representatives, have been very quiet; many unprepared for the strong anti-TTIP activism. A representative of a transatlantic business

organization acknowledged ‘[t]hey [industry] realize now that civil society groups now have an advantage in the marketing of TTIP and TTIP issues, and that businesses have difficulties in getting across their concerns and issues and businesses difficulty conveying the truth and countering misperceptions distributed by CSOs. There are intense discussions now on how to counter misperceptions and promote TTIP.’⁸⁰ Industry leaders also became less sanguine about TTIP between 2013 and late 2014.⁸¹ These responses are similar to Dürand Mateo’s (2014) findings of firms’ reluctance to wade in against public opinion and counter interest groups’ campaigns (against ACTA) for fear of a bad public image.⁸² However, ACTA eventually became such a hot issue some business organizations felt forced to become active; as noted above, TTIP may well see more active business organizations in 2015-16.

There are still other possible variables explaining growing opposition to TTIP. A major argument when launching TTIP was that it would improve economic growth and create jobs, and this has since been touted repeatedly by EU officials and business groups. Since unemployment and the economic situation remained the top concerns of European citizens in 2013 and 2014 (Eurobarometer 80,82), with trade not figuring in either survey and a majority of Europeans believing trade fails to create jobs, one could expect citizens to be less receptive to anti-TTIP campaigns. Yet Eurobarometer surveys show a slight decline from April 2013 to September 2014 in the percentage believing their country’s economic situation was ‘bad’ (73% to 68%). There has also been declining trust in EU institutions and national governments since the financial crisis, so citizens may just be opposed to EU initiatives, including TTIP. 48% of EU citizens trusted the EU in 2009 but only 31% in 2013; 38% trusted national governments in 2009, but only 25% in 2013. However, by spring 2014 the declining trend reversed, and by fall 2014 trust in EU institutions was up 6% points from a year earlier, to 37%, and 29% now trusted

their governments. In sum, the trends on people's views of the economy and trust in the institutions negotiating TTIP thus reinforces the hypothesis of anti-TTIP campaigns influences.

5. Conclusion

Groups with limited resources have made effective use of selective data, simplifications, exaggerations, and distortions, especially in social media disseminations. While the extent of influence requires further study, including extensive surveys of participants, correlations and admissions by participants indicate that civil society groups have both shaped public opinion and influenced the trajectory in TTIP.

The Commission knew when launching TTIP that it needed a strong message; a holistic approach that was proactive and quickly reactive, uniting media relations, outreach and monitoring of public debate, targeted communications material deployed material through all channels, including online and social media.⁸³ Focusing on KOREU, Siles-Brügge (2011) argues the Commission created a prevailing economic narrative on the imperative of trade liberalization as a 'necessary response to external economic imperatives,' in order to overcome sector-specific opposition and complete the agreement with modifications satisfactory to domestic interest groups. The conclusion of 'deep' FTAs with Korea and Canada show the EU can accommodate business preferences and interest groups to sign beneficial agreements. However, TTIP has generated unprecedented attention, and the Commission's communication has been largely unsuccessful in countering the perception that TTIP will benefit big business but not average citizens.⁸⁴

Upon leaving office in the fall of 2014 EU Trade Commissioner de Gucht acknowledged it would be a challenge even with the best of campaigns and messaging: 'Trade has become much more political. You can only do this [TTIP] deal if there's enough political steering and enough political will to do it,... Well, on both sides – on the American side but also on the

European side – that still has to be demonstrated.’⁸⁵ In regards to the German debate he argued, ‘I cannot convince the German public. It’s up to the German politicians; it’s up to Ms Merkel and Mr Gabriel to convince their population, that’s their task. I know she has been speaking out in favour, but she should make a political point of it, that there’s a clear position of the government on [the US deal].’⁸⁶

Politics, not macroeconomic data or models, will determine the fate of TTIP, and anti-TTIP civil society interest groups thus far appear more successful in garnering support on key issues. As US Ambassador to the EU Gardner recognized ‘The deal will not collapse because of differences in standards or regulations, but rather from the perception that there is not enough upside for key constituencies.’⁸⁷

Table 3.

Key Advanced Economies Quite Wary of Global Economic Engagement

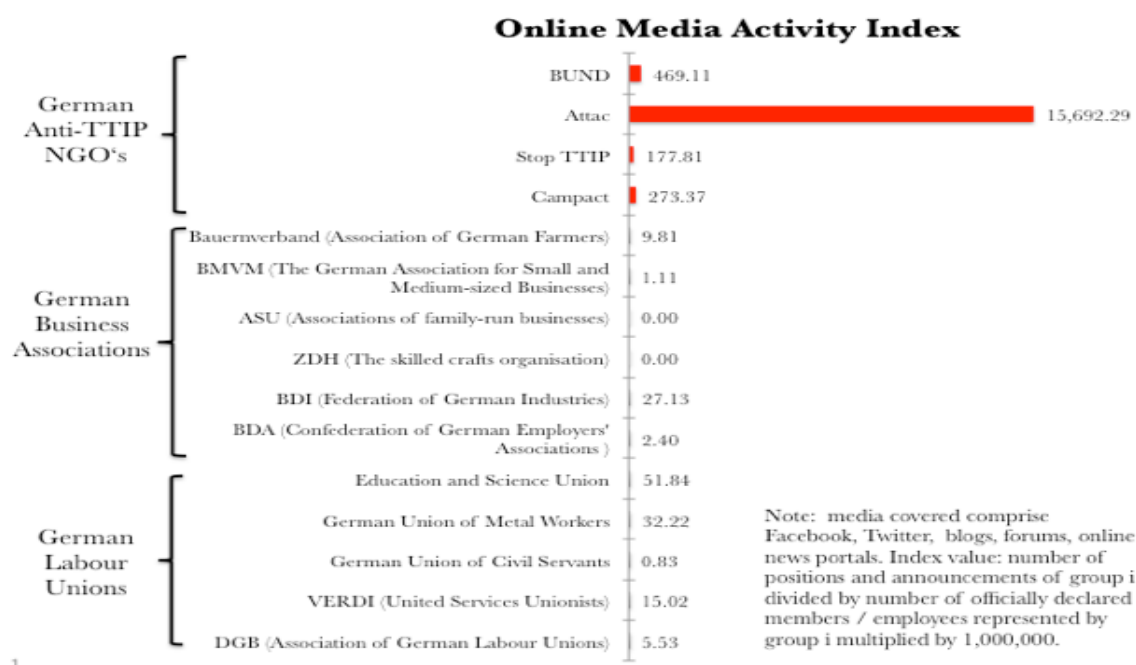
	Global median	France	Italy	Japan	U.S.
	%	%	%	%	%
Trade destroys jobs	19	49	59	38	50
Trade lowers wages	21	47	52	37	45
Foreign companies buying domestic companies is bad	46	68	73	76	67

Note: Global medians exclude France, Italy, Japan & the U.S.

Source: Spring 2014 Global Attitudes survey. Q28, Q29 & Q31.

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Table 4. Online Activity on TTIP in Germany (source: Bauer, 2015, at <http://www.ecipe.org/blog/anti-ttip-german-online-media>)



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<http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds440_e.htm#bkmk440r> [accessed 1 June 2014]

¹ This paper includes insight gained from several personal discussions with EU and US negotiators, stakeholders, and public officials in 2012 -2015.

² Hamilton and Schwartz 2012:4; cf. Felbermayr et al 2013: 28

³ Numerous studies assessing the economic benefits of reduced or eliminated tariffs and NTBs, find, on average, that removing all tariffs along with half of all NTBs is estimated to boost EU and US GDP by 0.4 -0.8 percent annually, with roughly 80% of benefits stemming from removing NTBs; the economic benefits for the rest of the world are projected by the EU Commission to be €100bn (Francois 2013: 54; Felbermayr et al 2013: 19; EC 2013c; Erixon and Bauer 2010). For a significant criticism of the methodology producing these figures see De Ville and Siles-Brügge, 2015. Regulations, and thus acceptable compromises on mutual recognition, equivalence, compatibility, or harmonization, reflect and affect domestic legal, socioeconomic,

and cultural variables, are uneasily quantified but highly important to the public's perceptions of an acceptable outcome.

⁴ WEF, 2014; cf. OECD, WTO and World Bank Group, 2014. Other studies on modern multilateral regional agreements show similarly minimum diversion, increased intra-industry and third-party trade, and job creation (cf. Roland-Holst, Reinhart, & Shiells, 1994: 163; Wolf, 2007:8). Schoof et al (2013) identify some trade diversion among rich countries stemming from a comprehensive TTIP.

⁵ cf. Hamilton 2014

⁶ Garcia, 2013. Citing Barrau (1999) Garcia mentions the Mexico –EU PTA as one where human rights clearly took a backseat to the economic interests of countering trade diversions from NAFTA (p. 527).

⁷ EU's applied tariffs are higher than America's in most categories of agriculture and food; the estimated value of NTBs on each varies by study, Ecorys (2009) looks at each category within agriculture and food, whereas Francois et al (2013) assess the sector as a whole, resulting in higher estimated costs in the latter.

⁸ Prior to the 1997 EU ban on poultry undergoing certain pathogen reducing techniques, particularly antimicrobial rinses (water plus a chemical) with chlorine dioxide, acidified sodium chlorite, or other similar and FDA approved rinses, US exports to the EU were four times higher than in 2011, and most of current exports are believed to be transshipments (the end destination is outside the EU). Cf. Johnson, 2012.

⁹ Ambassador Gardner's Remarks before the EP's Committee on International Trade United States Mission to the European Union, September 3, 2014 at http://useu.usmission.gov/gardner_inta_sept0314.html. Complicating such requests is that in the late 1990s 10-15% of US hormone free beef exported to the EU was found to contain hormones, raising concerns about inspection procedures. Sien, 2007, p.572

¹⁰ E.g. BEUC, 2014; Pew, 2014.

¹¹ E.g. BEUC, 2014; Josling & Tangermann, 2014, esp. P. 16

¹² Friends of the Earth Europe, Position Paper on TTIP, October 2013;

¹³ BEUC, 2014:2

¹⁴ Letter to De Gucht, June 28, 2014. See e.g.

http://www.euractiv.com/files/26.08.2014_letter_to_de_gucht_-_safety_of_europe_food_is_under_threat.pdf

¹⁵ Cf. Pew, 2014, 'Free trade with U.S.?' fn. 36, and Chase, 2014. In reality American regulatory safety standards are higher in some sectors, or segments thereof, including fishery, pharmaceuticals, or residuals on food stuff (which **acts** to block European artisanal food imports

¹⁶ BEUC representative, Stakeholder presentation, Chevy Chase, October 2014.

¹⁷ e.g. EU Citizens Initiative, Press Club Brussels,

<https://www.youtube.com/watch?v=GZq0stqilzA>; www.stopttip.org;

¹⁸ http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153026.pdf

¹⁹ Institute for Agriculture and Trade Policy, at <http://www.iatp.org/documents/analysis-of-the-european-commission-proposal-for-the-sanitary-and-phytosanitary-measures-s>; Friends of the Earth Europe, at <http://www.foeeurope.org/EU-US-trade-deal-threatens-food-safety-030215>

²⁰ Based on quantitative and qualitative assessment of 100 randomly selected risks out of 2878. Wiener et al 2010.

²¹ Source, EU Register of authorized GMOs at http://ec.europa.eu/food/dyna/gm_register/index_en.cfm

²² The EU Commission has deemed the US approval process for new plants, often taking a decade or more, unacceptably long, and therefore constituting a trade barrier in SPS. See EU SPS: Sanitary and Phytosanitary Issues, no. 105334 at http://madb.europa.eu/madb/sps_barriers_details.htm?barrier_id=105334&version=13

²³ Anne Glover led the establishment of the pan-European network of scientists in 2013, while calling for more evidence based approach to policy ('Evidence-based Union? A new alliance for science advice in Europe,' *The Guardian*, June 23, 2013). She was also quoted from her presentation at European Network on Soil Awareness, 19 September, 2013, as saying 'No other foodstuff has been so thoroughly investigated as GM,...No scientist will ever say something is 100 per cent safe but I am 99.99 per cent certain from the scientific evidence that there are no health issues with food produced from GM crops. Just about every scientist I know supports this view. Opposition to GM, and the benefits it can bring, is a form of madness I don't understand. ('Madness' of opposition to GM crops says Glover,' *The Scotsman*, October 20, 2013). On abolishing her position see e.g. "European Science's Great Leap Backward,' *The New Yorker*, November 21, 2014; 'Juncker Science The European Commission's chief scientific adviser falls afoul of the green lobby.' *Wall Street Journal*, December 1, 2014.

²⁴ European Parliament legislative resolution of 13 January 2015 on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council amending Directive 2001/18/EC as regards the possibility for the Member States to restrict or prohibit the cultivation of genetically modified organisms (GMOs) in their territory (10972/3/2014 – C8-0145/2014 – [2010/0208\(COD\)](#).

²⁵ cf. Lester, 2013.

²⁶ Corporate Europe Observatory issued 'ten reasons to oppose ISDS' ; <http://corporateeurope.org/international-trade/2014/04/still-not-loving-isds-10-reasons-oppose-investors-super-rights-eu-trade>; Public Citizen and BEUC issued policy briefs, and videos on youtube proliferated (data being assembled), one example: <https://www.youtube.com/watch?v=n7ILGifP3bk>.

²⁷ Public Citizen, TACD, Green MePs have frequently cited Vattenfall vs. Germany (Vattenfall AB and others v. Federal Republic of Germany ICSID Case No. ARB/12/12) and Philip Morris v. Australia *Philip Morris Asia Limited v. The Commonwealth of Australia*, UNCITRAL, PCA Case No. 2012-12) as examples.

²⁸ <Data being assembled>

²⁹ H.R. 3830, 2014.

³⁰ US lead negotiator Malloney in Fox, 2014; H.R. 3830, sec. 2, par. 4G; CETAdr, 2014:7; EU lead negotiator Garcia Bercero at the Transatlantic Association for Consumer Dialogue meeting Washington DC, June 24, 2014; cf. 2012 US Model BiT; European Commission ISDS Fact sheet 2013.

³¹ Hans Stråberg, Europe Co-Chair for the Trans-Atlantic Business Dialogue, Chairman Atlas Copco, Utrikespolitiska Institutet October 13, 2014; cf. 'Trading and being treated fairly: Why European industry needs investment protection' by the American Chamber of Commerce, BusinessEurope, the European Services Forum, the Transatlantic Business Council and the European Round Table of Industrialists, in Euractiv 13 January, 2015..

³² E.g. Tietje et al 2014: 60 ff; Ikenson, 2014; Kleinheisterkamp, 2014; Erixon, 2014.

³³ The European Citizens Initiative against TTIP and CETA, part of the stopTTIP! coalition claims it is ‘supported by an alliance of 360 civil society organizations and trade unions from all over Europe.’ <https://stop-ttip.org/supporting-organisations/>

³⁴ Some comments by War on Want, Global Justice Now, and Citizens United for Democracy at <http://www.waronwant.org/news/press-releases/18200-european-commission-rejects-a-citizens-petition-against-the-eu-us-trade-deal-ttip>, <http://www.europeansunitedfordemocracy.org/the-eus-citizens-initiative-is-a-con-job/> For a list of media coverage see: <https://stop-ttip.org/media-reports-on-the-rejection-of-the-eci-against-ttip-and-ceta/>

³⁵ Euractiv, (2015), ‘Paris and Berlin call for review of EU-Canada trade deal,’ January, 27. German economics Minters Gabriel told a Harvard audience in regards to the Vattenfall case (filed under the EU Energy Charter when Germany decided to abandon nuclear energy), that his members of parliament asked why Swedish company should have the right to sue for billions of euros in a separate arbitration when three German companies sued in German courts and were told they have no right to compensation.

³⁶ EU Commission Press Conference, January 9, 2015 at

³⁷ E.g. Friends of the Earth Europe, at <http://www.foeeurope.org/eu-commission-deaf-opposition-investor-privileges-130115>; For earlier rejections of ‘tweaking and narrowing ISDS terms,’ see Public Citizen, 2014: 3; cf. TACD 2013, 2014.

³⁸ Milner & Edward D. Mansfield, 2012b, p. 10

³⁹ cf. Sherman & Eliasson, 2006, 2007.

⁴⁰ Gilens & Page 2014:571; cf. Kono 2008.

⁴¹ Dür and Mateo, 2014:1199, 1206. Some research also shows that high general public support for free trade in one country leads lower tariffs in the other country. Kono 2008

⁴² Weakliem 2003 in Dür and Mateo, 2014:1207

⁴³ Dür and Mateo, 2014:1211, quote and reference in original; emphasis added.

⁴⁴ cf. Van den Hoven, 2006

⁴⁵ cf. Buffet & Heuser, 1998; LaMarre, 2009; Eliasson, 2010.

⁴⁶ For example, when the AFL/CIO shows general unemployment figures rising around the same time as either agreement or ratification of a FTA or PTA over the past two decades, and responds, when asked whether that is accurate to included non-tradable sectors (public services, protected areas such as shipping and air travel) and to draw causal inferences from what appears at best to be weak correlations, that ‘Well, it’s all neo-liberalism’s faults, that’s to blame, it’s the same thing.’ (Stakeholder presentation, October 3, 2014).

⁴⁷ Burstein, 2010

⁴⁸ cf. e.g. Kensinger, 2011; Franks, 2014

⁴⁹ Cf. Call & Berry, 2011; cf. Bennett, 1996.

⁵⁰ Pew Research Center, *What Americans Know: 1989-2007 Public Knowledge of Current Affairs Little Changed by News and Information Revolutions*, April 15 2007, <http://people-press.org/report/319/public-knowledge-of-current-affairs-little-changed-by-news-and-information-revolutions>.

⁵¹ cf. Dür and Mateo, 2014:1209

⁵² cf. Binderkrantz, 2008; Dür and Mateo, 2014:1206

⁵³ Bevan and Jennings, 2014 (adopting Stimson, 1995)

⁵⁴ Dür and Mateo, 2014:1207

⁵⁵ Dür and Mateo, 2014:1206

⁵⁶ Baumgartner et al's, 2009

⁵⁷ Special Eurobarometer 357, International Trade, 2010

⁵⁸ Pew Global Attitudes Study, April 9, and September 16, 2014; Special Eurobarometer, 2015

⁵⁹ Correlation coefficient 0.006 (seven member states).

⁶⁰ YouGov/ 38 Degrees Survey Results August 25-28 2014, at [https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/umt71i8wcn/38degrees_results_140826_TTIP_W\(new%20tabs\).pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/umt71i8wcn/38degrees_results_140826_TTIP_W(new%20tabs).pdf)

⁶¹ https://stop-ttip.org/wp-content/uploads/2015/02/ECI-Partner-List_0227.pdf. Surveys asking about involvement is part of ongoing research.

⁶² On Germany cf. Bauer, 2015.

⁶³ Commission Staff Working Document Report Online public consultation on investment protection and invest or-to-state dispute settlement (ISDS) in the Transatlantic Trade and Investment Partnership Agreement 13 January 2015.

⁶⁴ See e.g. Public Citizen's ISDS brief

⁶⁵ For example, Public Citizen on ISDS, The European Consumer Organization, Transatlantic Consumer Dialogue, a tactic confirmed in personal communication, June 2014.

⁶⁶ See e.g. 'Transatlantic coalition rejects anti-consumer trade deal' *Deutsche Welle* (June 13, 2013), <http://www.dw.de/transatlantic-coalition-rejects-anti-consumer-trade-deal/a-16874500>; Freund, 2014; International Trade and Legal Affairs Committees meeting January 27, 2015, at <http://www.europarl.europa.eu/ep-live/en/committees/video?event=20150127-1500-COMMITTEE-JURI-INTA>.

⁶⁷ Becker (2013) explains that whereas the real world is too complex, full of so many contingencies that predictions using current economic modeling are shrouded in uncertainty, the results they produce are presented as trustworthy, reliable, predictions, thus creating "fictional expectations". On the prospective and estimated economic benefits see Erixon & Bauer, 2010; Bergh & Henrekson, 2012. For studies employing computable general equilibrium (CGE), the "cutting edge" of economic work see Pelkmans et al, 2014: 4; Feldemayr et al 2013, and for substantive criticism of these models see DeVille and Siles-Brugge (2015).

⁶⁸ cf. Echols, 1998:543

⁶⁹ cf. Echols, 1998 Krauss, 2014; Thibaut de Saint Pol and Claude Fischler in Falkehed, 2014. Even the German Federal Institute for Risk Assessment found American PRTs for chicken to be safe. See 'Verbraucherschutz: Behörde hält Chlorhühnchen für unbedenklich' *Spiegel Online*, June 10, 2014, at <http://www.spiegel.de/forum/gesundheit/verbraucherschutz-behoerde-haelt-chlorhuehnchen-fuer-unbedenklich-thread-128635-1.html>

⁷⁰ Special Eurobarometer 419, October 2014.

⁷¹ Pew Global Attitudes Study April 2014.

⁷² <http://www.efsa.europa.eu/en/factsheet/docs/reporten.pdf>

⁷³ Eurobarometer 357,

⁷⁴ Discussion with EU official with DG Trade, October 18, 2012.

⁷⁵ Member of the EU TTIP negotiating team, June 24, 2014

⁷⁶ High-level official with the USTR and member of the TTIP negotiating team, January 9, 2015.

⁷⁷ Given that media outlets, newspaper in particular, are less likely to use abbreviations or unfamiliar terms for a general audience, and that trade is generally understood as well as being part of TTIP, the term 'Transatlantic Trade' was used. This term is appropriate for contemporary

news stories but less useful to web searches, such as Google Trends, since it is also associated with the transatlantic slave trade.

⁷⁸ Commission official, DG Trade, February, 2015.

⁷⁹ http://europa.eu/rapid/press-release_MEMO-15-3202_en.htm

⁸⁰ Interview, February, 2015

⁸¹ Stanton, 2014

⁸² Dür and Mateo, 2014:1217-18

⁸³ European Commission, 2013a

⁸⁴ 41% of EU citizens believe companies' influences are negative, and 47% do not believe big business try to act responsibly in society, see Eurobarometer 363 at

http://ec.europa.eu/public_opinion/flash/fl_363_en.pdf

⁸⁵ Spiegel 2014: 3

⁸⁶ Spiegel, 2014:3

⁸⁷ Speech at the EU-US Industry Trade Day, Brussels, February 5, 2015